

## **WORKERS' COMPENSATION INDUSTRIAL COUNCIL**

**MAY 21, 2015**

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, May 21, 2015, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

### **Industrial Council Members Present:**

Bill Dean, Chairman  
Kent Hartsog, Vice-Chairman  
James Dissen  
Dan Marshall (via telephone)

### **1. Call to Order**

Chairman Bill Dean called the meeting to order at 1:00 p.m.

### **2. Approval of Minutes**

Chairman Bill Dean: The minutes of the previous meeting were sent out. Did everybody have a chance to look at them? Is there a motion to approve?

James Dissen made the motion to approve the minutes from the March 12, 2015 meeting. The motion was seconded by Kent Hartsog and passed unanimously.

### **3. Office of Judges' Report – Rebecca Roush, Chief Administrative Law Judge**

Judge Rebecca Roush: Good afternoon. Yesterday I emailed you a copy of the Offices of Judges' report for the month of April with our statistical analysis. It basically looks the same as it does most months. For the month of April we acknowledged 338 protests for a total of 1,161 currently pending before our office. The breakdown of how that pertains to each carrier type is what you would expect to see. We have approximately 9% coming from the Old Fund; 73% of our protests from the private carrier market; and almost 17% from the self-insured employer market. The rest of the information is a breakdown of the types of protests we have in our office. And, of course, our compliance numbers for the month, as well as our numbers for particular types of litigation before our office – the failure to timely act process, the expedited

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hearings, and petitions for attorney fees, which is included in the final pages. I'm happy to take any questions you might have regarding the report.

Chairman Dean: Mr. Dissen, do you have any questions?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: I know this was a question a few years ago. . .just to kind of follow up. I think we talked about it a little bit. Proportionally. . .if you look at the protests within each one of the three groups, is there any way to know if that's kind of proportional to. . .is there any reasonable measure to see if it's proportional to the activity within the group? It's kind of out of kilter.

Judge Roush: I think what we would have to do would be coordinate with the agency to know the total number of filings and things of that nature in order to know if it's proportionate or not. We do not collect data or have any access to data on the number of filings that are lodged with the Insurance Commissioner. But I'm happy to share the data with them, and we do share data with them for their purposes.

Mr. Hartsog: I was just wondering. . .is there any one particular group here that's out of kilter with the others? All of those percentages are pretty reasonable and in line with what I would expect.

Judge Roush: We recently looked at our results on decisions. And I will say that it looked very consistent over the years. To the best of my knowledge nothing in this report looks out of kilter for any one of these carrier types.

Mr. Hartsog: Thank you.

Chairman Dean: Mr. Marshall, do you have any questions for Judge Roush?

Dan Marshall: Not today, Mr. Chairman.

Chairman Dean: Thank you, sir.

Judge Roush: Just a couple more things. The Supreme Court issued a very large decision yesterday. In fact it is 45 whopping pages, in the matter of *Gary E. Hammons v. West Virginia Office of the Insurance Commissioner*. I personally have not read this

line by line, although I understand from my colleagues that it is a very big decision. The most important point being Syllabus point 5, which states: "When a workers' compensation claimant receives an award of permanent partial disability (PPD) for an initial workplace injury; timely files a reopening request seeking to add an additional related injury to his/her claim; such additional injury is ruled compensable; and the Commissioner, or other named party, fails to refer the claimant for a PPD evaluation, the claimant may request a PPD evaluation referral even if the time period for reopening the initial claim contemplated by W. Va. Code has expired." So, they basically said that you can get a PPD rating for an injury outside of the five year limitation found in the statute.

Mr. Hartsog: You can. But if I heard you right, you need to file beforehand. . .

Judge Roush: You have to timely file it within the five year period.

Mr. Hartsog: Within the five year period. But if you just don't happen to get referred out by then, that still just left the window open. . .correct?

Judge Roush: That's correct. I will leave this [decision] with you. There was a dissent. Finally, I just wanted to add that we have hired a new ALJ to replace a Judge that retired. Jim Gerchow retired at the end of last year. He had been with the agency for more than 35 years. We have replaced him with John Mazezka. He's an attorney from the northern part of the state – the Weirton area. He comes from the law firm of Frankovitch, Anetakis, Frankovitch, and Simon. He will be joining us on June 16.

Chairman Dean: Very good. Thank you.

#### **4. General Public Comments**

Chairman Dean: Does anybody from the general public have a comment today?  
[No comments from the public.]

#### **5. Old Business**

Chairman Dean: We'll move onto old business. Does anybody from the Industrial Council have anything under old business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall, do you have anything under old business?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner Riley?

Commissioner Michael Riley: No, sir.

Chairman Dean: Mr. Pauley?

Andrew Pauley, General Counsel, OIC: No, sir.

## **6. New Business**

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner Riley?

Commissioner Riley, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

**7. Next Meeting**

Chairman Dean: The next meeting will be Thursday, July 23, 2015, at 1:00 p.m. Does that meet everybody's schedule?

Mr. Marshall: Yes, sir.

Mr. Hartsog: Yes.

Mr. Dissen: Yes.

Chairman Dean: Okay. That date is good.

**8. Executive Session**

Chairman Dean: The next order of business is the Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Dissen made the motion to go into Executive Session. The motion was seconded by Mr. Hartsog and passed unanimously.

[The Executive Session began at 1:10 p.m. and ended at 1:29 p.m.]

Chairman Dean: We are back in regular session. The Resolution in front of us is to revoke the self-insured status of Kvaerner North American Construction, Inc. Is there a motion?

Mr. Hartsog: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded. Any question on the motion? All in favor, "aye." Opposed, "nay." The ayes have it. Motion passed. Is there anything else that needs discussed under the regular session of the Industrial Council? Seeing none, is there a motion for adjournment?

## **8. Adjourn**

Mr. Dissen made the motion for adjournment. The motion was seconded by Mr. Hartsog and passed unanimously.

There being no further business the meeting adjourned at 1:31 p.m.